
No. 96-2571

United States of America,

Appellee,

v.

Cecil L. Wallis,

Appellant.

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* Appeal from the United States

* District Court for the

* District of North Dakota.

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[UNPUBLISHED]

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Submitted: November 5, 1996

Filed: November 15, 1996

Before BOWMAN, MAGILL, and LOKEN, Circuit Judges.

PER CURIAM.

Cecil L. Wallis pleaded guilty to being a felon in possession of a firearm. He appeals his mandatory minimum fifteen-year prison sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e) and U.S.S.G. § 4B1.4(a), arguing that he does not have the requisite three predicate offenses. The district court¹ held that his three prior Texas and Arizona burglary convictions were predicate "violent felonies" under 18 U.S.C. § 924(e)(2)(B). We agree and therefore affirm.

"Burglary" is included as a violent felony if it "involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii). Wallis argues that he was convicted under Texas and Arizona burglary statutes that do not

¹The HONORABLE PATRICK A. CONMY, United States District Judge for the District of North Dakota.

meet the generic definition of burglary set forth in United States v. Taylor, 495 U.S. 575, 599 (1990): "any crime . . . having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." Taylor instructs us to first review those state statutes using a "formal categorical approach, looking only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions." Id. at 600.

The Texas statute defined burglary as entry into a "habitation," including a "vehicle that is adapted for the overnight accommodation of persons." Tex. Penal Code Ann. §§ 30.01, 30.02 (1994). We agree with other circuits that this meets the generic burglary definition. See United States v. Spring, 80 F.3d 1450, 1462-63 (10th Cir. 1996) (rejecting argument that inclusion of "vehicle adapted for the overnight accommodation of persons" rendered statute nongeneric); United States v. Silva, 957 F.2d 157, 162 (5th Cir.), cert. denied, 506 U.S. 887 (1992); United States v. Sweeten, 933 F.2d 765, 771 (9th Cir. 1991). The Arizona statute included burglary of a "yard." Ariz. Rev. Stat. § 13-1506 (1989). Although that expanded burglary beyond the generic definition in Taylor, the district court properly determined, by examining the paper charging Wallis with his offense under that statute, that his conduct met the generic burglary definition. See United States v. Demint, 74 F.3d 876, 877 (8th Cir.), cert. denied, No. 96-5128, 1996 WL 395822 (U.S. Oct. 21, 1996).

Accordingly, the judgment is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.